IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. D-357-DB of 2006
Decided on : 30th October, 2012

Pawan s/o Mool Chand r/o Roshi Colony, Jhajjar

.....Appellant.

Versus

State of Haryana

..... Respondent

Criminal Appeal No. D-191-DB of 2006

Rajat s/o Takhat Singh r/o Chuliyan Pana, Beri Distt. Jhajjar

.....Appellant.

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE S.P. BANGARH

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Present: Mr. Akashdeep Singh, Advocate (amicus curiae),
for the appellant-Pawan
in CRA No. D-357-DB of 2006

Mr. J.S. Bedi, Advocate
for the appellant-Rajat
(in CRA No. D-191-DB of 2006)

Mr. H.S. Sran, Addl. AG, Haryana
for the respondent.

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S.P. BANGARH, J

The appellants have assailed the judgment of conviction dated 20.02.2006 and order of sentence dated 27.02.2006, passed by the learned Additional Sessions Judge, Jhajjar, in Session Trial No. 58 of 2005, Session Case No. 17 of 2002, emanating from FIR No. 236 dated 22.05.2002, under Section 302 read with Section 34 IPC, Police Station

Jhajjar, whereby, they were convicted for commission of offence punishable under Section 302 read with Section 34 IPC and sentenced to undergo imprisonment for life each and to pay a fine of ₹5,000/- each and in default of payment of fine, to further undergo imprisonment for 03 months each.

Criminal Appeal No. D-357-DB of 2006, filed by Pawan appellant and Criminal Appeal No. D-191-DB of 2006, filed by Rajat appellant pertain to common impugned judgment and order of sentence, there are taken up together and the judgment shall be passed in Criminal Appeal No. D-357-DB of 2006.

The case of the prosecution is that on 22.05.2002, Parveen Kumar (complainant) had come to Jhajjar for his personal work. When at about 11.45 a.m., he reached near the old bus stand, Jhajjar, Pankaj son of Durga Dutt (since deceased) met him on his motorcycle. Parveen-complainant was also on his own motorcycle and they went towards the Silani Gate. When they reached near the shop of Fanne Khan, mechanic, Rajat-appellant came driving on one Yamha motorcycle and Pawan-appellant was pillion rider, thereon. Rajat-appellant stopped his motorcycle, and called Pankaj-deceased, thereupon, latter also stopped his motorcycle then Pawan-appellant came near Pankaj-deceased after alighting from the motorcycle saying that he will teach him a lesson of protesting him on phone and he took a knife from the left side of his trouser and inflicted two blows, thereof, on Pankaj-deceased, one on the centre side of the chest and the other on the left side of the chest of Pankaj-deceased below the nipple. As a result, Pankaj-deceased fell down and one Partap, who was known to Pankaj-deceased came there. Complainant and Partap helped Pankaj-deceased and in the meantime, both the appellants (Pawan and Rajat) fled away on the same motorcycles towards

the old bus stand.

In the meantime, one Sandeep also came there and he took Pankaj-deceased to Civil Hospital, Jhajjar, who succumbed to his injuries on the way to hospital. Partap informed the family members of Pankaj-deceased. Motive of the occurrence was that Pawan and Rajat (appellants) used to use obscene language on the phone of Pankaj-deceased and for that latter protested. Statement (supra) Ex.PJ of Parveen was recorded by Bimla Devi, SI (PW-17) who read over the same to Parveen and the latter after admitting correctness, thereof, signed the same. Then Bimla Devi SI (PW-17) sent the statement Ex.PJ with her endorsement Ex.PJ/1 to Police Station, Jhajjar, where, formal FIR Ex.PJ/2 was recorded by Mahipal ASI. Bimla Devi SI (PW-17) had reached the Civil Hospital, Jhajjar on the basis of information received from Civil Hospital, Jhajjar, regarding the death of Pankaj in the Civil Hospital, Jhajjar vide ruqa Ex.PB. She prepared inquest report Ex.PE on the corpse of Pankaj and handed over his corpse to Chander Gupt ASI for getting conducted autopsy, thereon.

Later, Bimla Devi SI (PW-17) went to the place of occurrence. She arranged a photographer, obtained photographs of the spot Ex.P1 to P4 whose negatives are Ex.P5 to P8. She also prepared rough site plan Ex.PO of the place of occurrence with the help of Parveen (complainant). She also lifted blood stained earth from the spot and sealed that into a parcel with her seal bearing impression 'BD'. She also lifted one shoe of right foot of Pankaj-deceased which too was sealed into a parcel with her seal bearing impression 'BD' and that parcel was seized vide memo Ex.PL, which was attested by Partap and Jagdish and seal after use was handed over to Jagdish HC.

Motorcycle of the deceased-Pankaj was also sent to Police

Station by Partap relative of the deceased. Even, Mohinder Singh SI/SHO, also reached at the spot. Narinder DSP also reached at the spot. Bimla Devi S.I. PW-17 then went towards bus stand, where Chander Gupt ASI handed over to her one sealed parcel containing clothes of the deceased-Pankaj and along with sealed envelope containing seal impression and inquest papers. Parveen (complainant) also reached at bus stand, who was having blood stained shirt and trouser; he had taken the deceased to the doctor; he handed over those (trouser and shirt) to Bimla Devi SI (PW-17) who sealed those into a parcel with seal bearing impression 'CG' and seized that parcel vide memo Ex.PN. She handed over the seal after use to Chander Gupt ASI.

Bimla Devi SI (PW-17) on 24.05.2002 at about 8.00 p.m. arrested Pawan-appellant from bus stand, Jhajjar and she sent information about his arrest to his brother. She also got Pawan-appellant medico legally examined and interrogated him on 25.05.2002. During interrogation, Pawan-appellant suffered disclosure statement Ex.PF and pursuant, thereto, he got recovered knife whose sketch Ex.PG was prepared and the same was seized vide memo Ex.PH. She also prepared rough site plan of the place of recovery of knife Ex.PQ.

Mohinder Singh, Inspector, P.S. City, Bahadurgarh arrested Rajat-appellant on 24.05.2002, who in the presence of Partap and Suraj Bhan was interrogated on 26.05.2002. During interrogation, Rajat-appellant suffered disclosure statement Ex.PI and pursuant, thereto, he got recovered motorcycle bearing No. DBT 2696 Suzuki from a room near Kachhi Beri road and that was seized vide memo Ex.PI/A. Rough site plan Ex.PM of the place of recovery of motorcycle was also prepared by Mohinder Singh, Inspector (PW-14).

Blood stained earth, blood stained clothes and blood stained

knife were sent to the Forensic Sciency Laboratory, Madhuban, who gave report containing two leaves Ex.PR and PR/1. In the report Ex.PR, it was mentioned that blood was detected in the blood stained earth, blood could not be detected on the knife and the T-Shirt, trousers, underwear, shoes; shirt and trousers were stained with blood.

After completion of investigation, Station House Officer of Police Station Jhajjar instituted police report under Section 173 Code of Criminal Procedure (Cr.P.C-for short) before the learned Illaqa Magistrate to the effect that it appeared that the appellants had committed offence punishable under Sections 302/34 IPC.

On presentation of police report, copies of documents as required under Section 207 Cr.P.C. were furnished to the appellants and the case was later committed to the Court of Session, where charge under Section 302 IPC read with Section 34 IPC was framed against both the appellants, whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

At the trial, the prosecution examined following 17 witnesses whose depositions are as under:

PW-1 Surinder Kumar Photographer testified that on 22.05.2002, he visited the spot and took the photographs Ex.P1 to P4 whose negatives are Ex.P5 to P8.

PW-2 Vijay Singh, MHC testified taht on 22.05.2002, Bimla Devi SI deposited with him a sealed parcel of blood stained earth, a sealed parcel of clothes of the deceased, a sealed parcel of a knife and a sealed parcel of clothes of the prosecution witnesses and on 08.07.2002, he handed over those to Jagbir Singh Constable for deposit, thereof, with the Forensic Science Laboratory at Madhuban and the latter, after depositing the same in the Laboratory (supra) handed over receipt to him. He further

testified that, so long as, the case property remained in his possession, no one tampered, therewith.

PW-3 Virender Kumar Constable testified that on 22.05.2002, Mahipal Singh ASI handed over to him three envelopes containing special report and he handed over one envelope to Ilaqa Magistrate at his residence and two other envelopes to SP/DSP concerned without any delay.

PW-4 Dr. S.C. Nawal testified that on 22.05.2002, he sent intimation Ex.PG regarding the corpse of Pankaj to the Police Station City, Jhajjar at 12.15 noon.

PW-5 Jai Chand Constable testified that on 10.07.2002, he inspected the spot and prepared scaled site plan Ex.PH.

PW-6 Ombir testified that on 20.06.2002, he recorded the statement of Surender Singh Constable, Vijay Pal HC, Jaiveer Constable and Jai Chand Constable under Section 161 Cr.P.C as also, he collected the photographs from Surinder Photographer and he also got drawn site plan from Jai Chand Constable.

PW-7 Dr. Aruna Sangwan testified that on 22.05.2002, she conducted the autopsy on the corpse of Pankaj and found the following injury:

> 1. "Incised wound of 7x2.5 cm, with regular smooth and bevelled margins lying obliquely from the xiphisternum just about costal margins downwards and laterally 9 cm below left nipple cut and soft 8th and 9th ribs were seen in the wound. Underlying muscles were cut and haematoma was present. On further dissection there was cut on pericardium of size 2.5 cm x 2.2 cm. Corresponding to the wound. On further dissection there was a wound of size 3 x 2.2 cm on anterior medial aspect of right ventricle perforating interventricular spectum and going to left ventrical. Paricardial cavity was full of blood.

She further testified that the cause of death in their opinion was due to injuries to the vital organ i.e. heart, leading to haemorrhage and shock, which was ante mortem in nature and sufficient to cause death in due course. She also testified that the autopsy was conducted by panel of doctors consisting of herself and Dr. Raj karan. She also testified that time between death and autopsy was 3 to 24 hours. She also testified that she handed over to the police a well stitched corpse with its belongings, a parcel bearing 5 seals containing shirt, trouser and underwear, police papers 8 leaves in number duly signed by her, copy of PMR No. AS/1/02 on 22.05.2002 and sample of seal. She also proved copy of the autopsy report Ex.PD. She also proved police request Ex.PD/1. She also testified that she and Dr. Raj Karan gave opinion Ex.PD/2 that possibility of injury caused by the knife which had been shown to her cannot be ruled out and thereafter, they re-sealed the parcel of knife with three seals and handed over that parcel along with sample seal to Moti Ram ASI. Knife Ex.P9 was shown to this witness during her deposition. Underwear Ex.P10, T-shirt Ex.P11, trouser Ex.P12 were also produced during the deposition of this witness, who identified to be those which were handed over to the police by her and which were worn by the deceased-Pankaj at the time of autopsy.

PW-8 Amit Yadav testified that Pankaj Yadav (deceased) was his younger brother and that on 22.05.2002 after receipt of information, he went to Civil Hospital, Jhajjar, where he identified the corpse of his brother.

PW-9 Ram Mehar testified that on 25.05.2002, he had gone to the Police Station Jhajjar and in his presence, Bimla Devi SI interrogated Pawan-appellant, who suffered disclosure statement Ex.PF to the effect that the knife used by him in the occurrence had been kept concealed by him in a plot in his house underneath the bricks and could get the same recovered. He further testified that Pawan-appellant led the police party

and the witnesses to that place and got recovered knife Ex.P9 whose rough sketch Ex.PG was prepared and later parcel, thereof, was also prepared which was sealed with the seal bearing impression 'MR' and that parcel was seized vide memo Ex.PH, which attested by him and Satish Kumar Constable.

PW-10 Partap Yadav also testified that on 26.05.2002, he had gone to the Police Station Jhajjar, where Mohinder Singh ASI interrogated Rajat-appellant and during interrogation, the latter made disclosure statement Ex.PI to the effect that he has kept concealed a motorcycle bearing No. DBT 5696 near bundh in an abandoned place on kachha Beri road and could get the same recovered and pursuant, thereto, he got recovered the motorcycle from the place disclosed in his disclosure statement and that was seized vide memo Ex.PI/A, which was attested by him and Suraj Bhan HC.

PW-11 Parveen Kumar testified that on 22.05.2002, he was present at old bus stand, Jhajjar at about 11.45 a.m. on his motorcycle. At that time, Pankaj-deceased met him who came on motorcycle from Electricity Office, Jhajjar and then they started towards Silani gate on their respective motorcycles and when they reached near Fanne Khan mistri, Pawan-appellant came there on motorcycle and called Pankaj-deceased and then he took out a knife and gave a blow on the chest of Pankaj-deceased and then he gave another blow on the left side of chest of Pankaj-deceased and after receiving injury Pankaj-deceased was calling to save him and in the meantime Sandeep also came there, who was also known to him and they took him to hospital and Pankaj-deceased died on the way to hospital. He further testified that he informed the family members of Pankaj on phone and on receipt of information, mother, sister of the deceased-Pankaj and Partap came there and in the evening at

4.30 p.m., father of Pankaj-deceased also came there and police recorded his statement Ex.PJ and he had not told anything to the police. He further testified that police told him to give his clothes which were blood stained. On the next day, he sent his clothes to the police in a polythene bag. He came to his house at 5.00 p.m. on 22.05.2002 and his signatures were obtained at 4.45 p.m. on 22.05.2002. This witness was declared hostile to the respondent and cross-examined by the learned Public Prosecutor for the respondent before the learned trial Court.

PW-12 Jaibir Constable tendered in evidence his affidave Ex.PK.

PW-13 Partap Singh also testified that on 22.05.2002, he had come to Jhajjar for his personal work and at about 11.45 a.m., he was present in front of the shop of Fanne Khan mistri and at that time, two motorcycles came from behind from the side of old bus stand, Jhajjar and one motorcycle came from the side of Silani Gate, on which two boys were sitting and the person who was driving the motorcycle asked the motorcycle driver coming from the old bus stand to stop and both the motorcycles stopped at that place and the pillion rider of the motorcycle, coming from the side of Silani gate alighted from the motorcycle and took out a knife from the left side of his waist and gave two blows, thereof, on the person of the deceased-Pankaj. He further testified that the motorcycle which had come from the side of Silani gate was kept in starting position by its driver and the assailants by saying that the work is done fled away on the motorcycle towards the old bus stand. In the meantime, another boy Sandeep alleging himself to be friend of Pankaj-deceased also came there and both of the them lifted Pankaj-deceased to whom, he was earlier known and then they took him to the hospital and later he (sandeep) went to the house of D.D. Yadav, father of the deceased to inform about the incident and then he (D.D. yadav) learnt that Pankaj had expired. He

further testified that police official Jagdish took him in a jeep to the place of occurrence from where blood stained earth and shoe of the deceased-Pankaj were lifted and seized vide memo Ex.PL, which was signed by him. He also testified that the person who was driving the motorcycle was Rajat-appellant and the person who inflicted knife blow was Pawan-appellant and both are present in the Court. Shoe Ex.P15 was shown to him during his deposition.

PW-14 Mohinder Singh Inspector testified that on 24.05.2002, he arrested Rajat-appellant from the Court at Jhajjar and obtained his police remand uptil 27.05.2002 and in the presence of Partap and Suraj Bhan on 26.05.2002, he interrogated Rajat-appellant and the latter suffered disclosure statement Ex.PI and pursuant, thereto, he got recovered motorcycle DBT 5696 Suzuki, which was seized vide memo Ex.PI/A. He also testified that the rough site plan Ex.PM of the place of recovery of motorcycle was also prepared by him.

PW-15 Moti Ram ASI also testified that on 25.06.2002, he moved an application Ex.PD/1 regarding opinion of the doctor regarding knife, as to whether the injury on the person of the deceased-Pankaj could be caused, therewith. He also testified that the knife was obtained by him from MHC, P.S. Sadar, Jhajjar, which was sealed into a parcel and after taking out the knife from the parcel, Dr. Aruna Sangwan and Dr. Raj Karan examined the knife and gave their opinion Ex.PD/2 that the possibility of injury found on the person of the deceased-Pankaj having been caused with that knife could not be ruled out. He also testified that doctor resealed the knife after examination and handed over the same to him with their report and he deposited that parcel again with MHC in the police station.

PW-16 Chander Gupt ASI also testified that on 22.05.2002, he took the corpse of Pankaj for autopsy as per direction of Bimla Devi SI and

after autopsy, the doctor handed over to him a sealed parcel of clothes of the deceased with the autopsy report and inquest papers duly signed by the doctor and a sealed envelope containing the seal impression and on return to the police station, he met Bimla Devi SI at bus stand, Jhajjar and handed over those to her who seized those vide memo Ex.PN. He also testified that in the meantime, Parveen also met them at bus stand, Jhajjar, who was having blood stains on his clothes, as he had taken the deceased to the hospital and he put off his clothes and handed over those to Bimla Devi SI and she sealed those clothes into a parcel with her seal bearing impression 'CG' and sealed that parcel vide memo EX.PN and seal after use was handed over by Bimla Devi Si to him. Trouser Ex.P13 and Shirt Ex.P14 were produced during the deposition of this witness.

PW-17 Bimla Devi SI investigated this case and she deposed on the lines of investigation, which has been reproduced in the earlier parts of this judgment.

After tendering in evidence the report of the Forensic Science Laboratory containing two leaves Ex.PR and Ex.PR/1, learned Public Prosecutor for the respondent before the learned trial Court closed the prosecution evidence.

After the close of prosecution evidence, both the appellants (Pawan and Rajat) were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in this case.

Pawan-appellant gave his own version that he is innocent and has been falsely implicated in this case. He also stated that indeed some unknown persons caused injuries to Pankaj-deceased in the wee hours and in connivance with the police and after consultation of relative advocate of the deceased-Pankaj and others, false eye witnesses have

been introduced and false recovery has been manipulated and indeed, no recovery of any kind was made from him.

Rajat-appellant also gave his own version that he is innocent and has been falsely implicated in this case and he has no concern with the alleged occurrence.

Appellants were called upon to enter in defence, but they closed the same without examining any witness in defence.

After hearing both the sides, the learned trial Court vide impugned judgment of conviction and order of sentence, convicted and sentenced the appellants, as described in the fist paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court have come up in this appeal with prayer for acceptance, thereof, and for their acquittal of the charge framed against them for the commission of offence punishable under Section 302 read with Section 34 IPC.

We have heard learned counsel for the appellants and learned Additional Advocate General for the respondent and perused the record of the learned trial Court with their assistance.

Learned Additional Advocate General for the respondent contended that all the prosecution witnesses supported the case of the prosecution and no motive can be ascribed to them to testify falsely in this case. He also contended that there is no inordinate delay in lodging the FIR and that the motive of the crime is that the appellants used to use obscene language in their phone calls being made to the deceased and the latter, resisted the same and that incensed the appellants to commit his murder. He also contended that the presence of both the appellants at the place of occurrence is

established from the testimony of the eye witnesses and the investigating officer duly verified the statements of the eye witnesses and came to the conclusion that the occurrence had taken place in the manner alleged by the eye witnesses. He also contended that Rajat-appellant was driving his motorcycle make Suzuki while Pawan-appellant was a pillion rider, thereon, and he was having knife with him and both had come prepared to kill Pankaj-deceased and the injury caused by Pawan-appellant on the chest of Pankaj-deceased proved fatal and he succumbed, thereto. He also contended that medical evidence provided through the testimony of PW-7 Dr. Aruna Sangawan corroborates the ocular evidence and it is also established from her testimony that the knife recovered from Pawan-appellant was a possible weapon for causing injury to the deceased. He also contended that there was only one injury on the person of the deceased, which proved fatal, which cut the muscles inside the body and that led to haemorrhage and shock.

On the other hand, learned counsel for the appellants contended that Sandeep was present at the spot, but he was not examined and due to his non-examination adverse inference was required to be drawn against the respondents. They also contended that there was delay in lodging in the FIR. They also contended that there was no blood stain on the knife allegedly recovered from Pawan-appellant, therefore, that could not be a weapon for causing injury and, if that is so, it becomes a case of no recovery of weapon of offence. They also contended that if the Forensic Science Laboratory report had indicated human blood on the knife allegedly

recovered from Pawan-appellant, only then that could be said to have been used in the alleged occurrence. They also contended that the recovery of motorcycle is also doubtful as no owner, thereof, has been examined, as also, it has not been proved as to in which capacity, Rajat-appellant was having motorcycle in his possession i.e either he was borrower, filcher or owner, thereof. Even, it was also contended that there is no registration number of the motorcycle mentioned in the FIR and even the make of the motorcycle is contradictory. They also contended that the presence of the complainant (Parveen-PW11) is doubtful as description of motorcycle has not been narrated in the FIR.

So, the learned counsel for the appellants contended that the case against the latter is not made out and, therefore, they are entitled to be acquitted by granting them benefit of doubt by acceptance of their respective appeals.

In addition, learned counsel for the Rajat-appellant contended that the latter did not cause any injury to the deceased-Pankaj, as also, his presence at the place of occurrence is doubtful and even, he has not been proved to be the owner or filcher or borrower of the motorcycle. He further contended that even if the facts of the prosecution case are accepted, even then, an offence punishable under Section 302 read with Sectin 34 IPC is not made out against Rajat-appellant. He also contended that no prior meeting of mind between both the appellants has been proved. Even, it has not been proved on the record that Rajat-appellant ever made a telephone call on the phone of the deceased. In absence of such

proof, it is arduous to hold that phone call was ever made by Rajat-appellant on the phone of the deceased.

In deed, Pankaj-deceased was pronto taken to hospital after the occurrence, but on way to hospital, he succumbed to his injury received in the incident that occurred on 22.05.2002. So far as, Pawan-appellant is concerned, PW-11 Parveen who is the informant of this occurrence in candid words testified that Pawan-appellant gave a blow of knife on the chest of the deceased-Pankaj. Though, there was only one blow on the chest of the deceased-Pankaj, PW-11 Parveen inadvertently testified that second blow on the left side of the chest of the deceased was also given by Pawan-appellant. This inadvertent deposition cannot make the incident doubtful.

In his deposition, PW-11 Parveen, did not testify about the presence of Rajat-appellant. At the most this deposition will make the case against Rajat-appellant doubtful and due to non mentioning of the name of Rajat-appellant as assailant, the entire statement of PW-11 Parveen cannot be repelled, as principle of *Falsus in uno, falsus in Omnibus* is not applicable in India, where grain has to be sifted from chaff. If principle of *Falsus in uno*, *falsus in Omnibus* would have been applicable in India, in that event, the entire statement of PW-11 Parveen could be repelled and benefit of doubt could be accorded to both the appellants.

When PW-11 Parveen in candid words testified that knife blow was given to Pankaj-deceased on his chest by Pawan-appellant, there remains no doubt about his participation in this incident who had a motive to cause the death of the deceased-

Pankaj as the, latter had been resisting his use of obscene language on his phone.

It is also candid from his testimony that his clothes got stained with blood of the deceased and he handed over those to the police and later in report of Forensic Science Laboratory Ex.PR, human blood was found, thereon. Evidence of PW-11 Parveen could not be shattered in the cross-examination by the learned counsel for the appellants before the learned trial Court. Though, PW-11 Parveen was declared hostile to the prosecution and cross examined by the learned Public Prosecutor for the respondent before the learned trial Court, yet his evidence qua Pawan-appellant cannot be disbelieved and repelled as in his examination-in-chief, PW-11 Parveen testified that knife blow on the chest of Pankaj-deceased was given by Pawan-appellant. Through, cross-examination, the learned Public Prosecutor for the respondent wanted to extract from the mouth of this witness that Rajat-appellant was present at the time of occurrence. PW-11 Parveen testified during cross-examination by the learned Public Prosecutor that he knew Pawan-appellant prior to the occurrence but Rajat-appellant was not known to him. Even he stated that Rajat-appellant was not there.

He further testified that it is wrong to suggest that he had colluded with the appellants and made a wrong statement partly. As already held, during cross-examination of PW-11 Parveen by learned counsel for the Pawan-appellant, testimony of this witness could not be shattered. The injury, which PW-11 Parveen stated on the person of the deceased was found in the autopsy report Ex.PD, prepared by

PW-7 Dr. Aruna Sangwan who also along with Dr. Raj Karan opined vide opinion Ex.PD/2 that possibility of injury caused by the knife, which was shown to them, cannot be ruled out and, thereafter that knife was resealed. This testimony of PW-7 Dr. Aruna Sangwan could not be shattered during cross-examination by the learned counsel for Pawan-appellant. It is no doubt true that during cross-examination, knife Ex.P9 was also shown to PW-7 Dr. Aruna Sangwan who stated that injury on the person of the deceased could be by any other sharp edged weapon like this. This opinion of PW-7 Dr. Aruna Sangwan is wrong especially, in view of her earlier opinion Ex.PD/2 that possibility of injury caused by knife which was shown to them, cannot be ruled out. When once PW-7 Dr. Aruna Sangwan testified that possibility of injury caused by knife shown to them cannot be ruled out, then there was no point for her to resile from this stand.

So, this statement made by PW-7 Dr. Aruna Sangwan in her cross-examination is perfunctory in nature and must be disbelieved in view of her earlier opinion given during investigation and stated during her examination-in-chief that possibility of injury caused by the knife, which was shown to them (manifestly during investigation of this case) cannot be ruled out.

So, it is established that the knife Ex.P9 was used in this occurrence and in view of the testimony of PW-11 Parveen, it must be held that this knife was used by Pawan-appellant for causing the death of Pankaj. Even, Partap Singh/PW-13 corroborated the testimony of PW-11 Parveen by testifying that the pillion rider of the

motorcycle after dismounting, therefrom, gave two knife blows on the person of the deceased-Pankaj and one Sandeep also came to the spot. He also testified that the person who inflicted the knife blow was Pawan-appellant and the person who was driving the motorcycle was Rajat-appellant. So, the testimony of PW-13 Partap Singh corroborated the testimony of PW-11 Parveen regarding causing of injury on the person of the deceased with knife by Pawan-appellant.

Testimony of PW-13 Partap Singh during cross-examination also could not be shattered. No motive can be ascribed to PW-11 Parveen and PW-13 Partap Singh to testify falsely in this case qua causing of injury to the deceased by Pawan-appellant. They are not alleged to have any animus or hostility against Pawan-appellant prior to the incident. Knife Ex.P9 used by Pawan-appellant for causing injury to Pankaj-deceased, whereto, latter succumbed , was recovered from Pawan-appellant, as can be seen from the testimony of PW-9 Ram Mehar, whose testimony also during cross-examination could not be shattered. No motive can be ascribed to PW-9 Ram Mehar to testify falsely in this case. The recovery of knife Ex.P9 from Pawan-appellant gave corroboration to the testimony of PW-11 Parveen and PW-13 Partap Singh to the effect that Knife Ex.P9 was used by Pawan-appellant for causing the death of Pankaj.

It is no doubt true that human blood was not found on the knife Ex.P9, as per the Forensic Science Laboratory report Ex.PR, yet that cannot be held fatal to the prosecution case, as Pawan-appellant in order to destroy evidence would have cleaned it before concealing it at the place of recovery. If the occurrence had not

taken place in the alleged manner, then, Pawan-appellant would have moved complaint to the higher police officials for his false implication in this case. Indubitably, he did not lodge any complaint against his false implication in this case, therefore, the stand taken by him in his examination under Section 313 Cr.P.C. is after-thought and perfunctory in nature, which could be upheld and affirmed only, if some cogent evidence has been led by him in defence.

He remained silent on the point of his alleged false implication by not lodging complaints with the higher police officials. So, his silence in this matter, whereon, he should have acted with alacrity must lead to inevitable conclusion that he was not implicated falsely in this case by the police and his complicity in the incident stands proved from the testimony of PW-11 Parveen and PW-13 Partap Singh.

Regarding delay in lodging the FIR, suffice, it to say, that incident took place at 11.45 a.m. on 22.05.2002 and the FIR was lodged in the police station at 2.15 p.m. on that very day and the special report was received by the learned Illaqa Magistrate at 6.00 p.m. The distance between the place of occurrence and of the residence of learned Illaqa Magistrate is about one kilo meter. If, the police caused delay in sending the special report to the learned Illaqa Magistrate, then the legal representatives of the victim cannot be allowed to suffer, especially, when the FIR was lodged at 2.15 p.m. Even there could be no manipulation on the part of the prosecution to implicate Pawan-appellant falsely in this case.

Police reached the hospital immediately after the

occurrence, as can be seen from the testimony of PW-17 Bimla Devi and she recorded the statement Ex.PJ of Parveen/PW-11. Otherwise also, the learned trial Court dealt elaborately this point of delay in FIR and no finding repugnant, thereto, can be given especially when there was no motive on the part of the eye witnesses to testify falsely in this case. PW-11 Parveen did his duty and suffered statement Ex.PJ before PW-17 Bimla Devi and that formed the basis of formal FIR, which was lodged at 2.15 p.m. and what happened later, is inconsequential to Pawan-appellant as no circumstance has been pointed out that there could be manipulation once FIR was lodged at 2.15 p.m. Brother of the deceased may be a lawyer, but no circumstance has come on the record that the FIR is the result of deliberation.

As already held, FIR is based on the statement of PW-11 Parveen and a meagre delay had happened till lodging of the FIR, as at that time, the dependents of the deceased would have come under shock and some time would have been taken by them for their recovery from shock which happened to them as a result of sudden unnatural death of Pankaj.

Motive is also candid in this case. Evidence of PW-11 Parveen on the point of motive could not be shattered. Pawan-appellant used to use obscene language on phone to Pankaj-deceased and that was resisted and that resistance by the deceased-Pankaj ired, Pawan-appellant and he committed the murder of Pankaj under that incensement.

There is delay in sending the exhibits to the Forensic

Science Laboratory, but that has no bearing on the case of prosecution as the prosecution witnesses i.e. PW-2 Vijay Singh MHC, PW-12 Jaibir Constable, PW-13 Partap Singh, PW-15 Moti Ram ASI and PW-17 Bimla Devi who handled the case property, in candid words testified that, so long as, the case property remained in their possession, no one tampered, therewith. Their testimonies during cross-examination could not be shattered and it follows, therefrom, that the case property was not tampered with during investigation and the exhibits were deposited with the Forensic Science Laboratory in an intact position.

Link evidence in this case is complete. Blood was found on the exhibits. The blood stained clothes were of the deceased, as also, of PW-11 Parveen which indicate that at the time of commission of murder of Pankaj, PW-11 Parveen was present and he tried to rescue the deceased-Pankaj and took him to hospital and in the process, his clothes got stained with blood.

Learned counsel for the appellant-Pawan then contended that at the most, latter inflicted only one injury with knife and he did not repeat the attack and, therefore, it cannot be said that Pawan-appellant had knowledge that his act was likely to cause death. So, he contended that at the most, Pawan-appellant could be held guilty for offence punishable under Section 304 Part-1 of IPC and, therefore, he contended that conviction of this appellant be converted to Section 304 Part-I of IPC.

Learned counsel for the appellant-Pawan placed reliance upon ***"Surinder Mohan and another v. State of Punjab, 2005 (1)***

RCR (Criminal) 326, passed by this Court, wherein, it was held that since the accused did not repeat the attack, he was guilty of offence punishable under Section 304 Part-I of the IPC and not under Section 302 IPC. The facts of this judgment and the case in hand are not akin. In this judgment, there was opinion of doctor that injury was was dangerous to life, but victim would have definitely survived in case timely aid would have been given. Indubitably, in the case in hand there is no opinion of doctor that if the victim (Pankaj) would have definitely survived in case timely aid would have been given. So, no benefit can be derived by Pawan-appellant of this judgment (supra).

There is thus, no illegality or perversity in the impugned judgment of conviction and order of sentence, qua Pawan-appellant and the same are, hereby, upheld and affirmed.

So far as, Rajat-appellant is concerned, the case against him is quite doubtful. PW-11 Parveen did not testify about his presence at the spot. Even, he testified that Rajat-appellant was no known to him prior to the occurrence. Even, during cross-examination by learned Public Prosecutor for the respondent before the learned trial Court, he testified that Rajat-appellant was not there on that day. So, PW-11 Parveen maintained his stand taken in his examination-in-chief to the effect that Rajat-appellant was not present with Pawan-appellant on the day of occurrence and even he was not known to him prior to the occurrence.

When Rajat-appellant was not known to PW-11 Parveen prior to the occurrence, obviously, he could not name him as

assailant. So, when in his examination-in-chief, he did not testify that Rajat-appellant was present at the place of occurrence, we fail to understand as to how the learned trial Court fastened him with the liability of commission of murder of Pankaj. This testimony has been overlooked by the learned trial Court who instead of granting benefit of doubt to Rajat-appellant found him guilty of offence punishable under Section 302 IPC read with Section 34 IPC.

Even, Rajat-appellant could be convicted and sentenced with the aid of Section 34 IPC, if PW-11 Parveen had testified in candid words that he was present at the place of occurrence along with Pawan-appellant. When there is no deposition of PW-11 Parveen about the presence of Rajat-appellant at the place of occurrence, he could not be held guilty of commission of offence punishable under Section 302 IPC read with Section 34 IPC.

Sandeep, who happened to be present at the place of occurrence, as per the deposition of PW-13 Partap Singh, was not brought into the witness box. In the earlier part of his statement; PW-13 Partap Singh did not name Rajat-appellant as a driver on motorcycle. Even, he did not state the registration number of the motorcycle being driven by Rajat-appellant on the day of occurrence. Even, he named Rajat-appellant as a driver of the motorcycle on the last lines of the cross-examination. If, he would have been sure about the participation of Rajat-appellant in this occurrence, he would have stated that Rajat-appellant was driving the motorcycle while Pawan-appellant was pillion rider, thereon.

So, this missing evidence in the beginning of the statement

of PW-13 Partap Singh must make the presence of Rajat-appellant at the place of occurrence doubtful. Even, there is no cogent evidence that Rajat-appellant formed common intention with Pawan-appellant. Even, there is no record that he had been using obscene language, when he used to make phone calls to the deceased. Indeed, no such record has been produced. Even, if it is assumed that Pawan-appellant was a pillion rider on his motorcycle, in that event, possibility cannot be ruled out that the Pawan-appellant might have taken lift on his motorcycle

Even, the recovery of the motorcycle is also doubtful. There is no description of the motorcycle used in the occurrence in the deposition of PW-11 Parveen and PW-13 Partap Singh. There is no document on the record that the motorcycle, which was allegedly recovered from Rajat-appellant belonged to him. There is nothing on record as to who was the owner of this motorcycle allegedly recovered from him by the police during investigation. Even, it is not proved as to whether Rajat-appellant had borrowed this motorcycle from someone for use. The name of that owner has not been disclosed.

Even, it is not proved that Rajat-appellant came in possession of this motorcycle as a filcher. No FIR regarding theft of this motorcycle has been placed on record. So, the recovery of motorcycle from Rajat-appellant is doubtful and the motorcycle did not belong to Rajat-appellant.

So, the fact remains that motorcycle was never used in the occurrence by Rajat-appellant and allegation levelled against him

that he transported Pawan-appellant to the place of occurrence on the motorcycle is unbelievable and the learned trial Court wrongly believed this version of the respondent that the motorcycle allegedly recovered from Rajat-appellant during investigation was used by him, without little realising that neither it belonged to him nor was it borrowed by him from its owner, nor its owner stepped into the box to state that it was either stolen or was lent by him to Rajat-appellant.

Even, lalkara was not raised by Rajat-appellant. This Court in ***"Kartar Singh v. State of Punjab, 2010 (2) RCR (Criminal) 542,*** acquitted the accused on the ground that allegation against him was that he raised 'lalkara'. So, even, if, Rajat-appellant had raised 'lalkara', he could be granted benefit of doubt, on the basis of judgment (supra). Even, he did not exhort Pawan-appellant to cause injury to the deceased-Pankaj and he is not the owner of the motorcycle and his possession, thereon, is not proved. So, he should have been granted benefit of doubt by the learned trial Court.

Qua Rajat-appellant, impugned judgment of conviction and order of sentence are required to be set aside.

Resultantly, criminal appeal No. D-191-DB of 2006 filed by Rajat-appellant is allowed; impugned judgment of conviction and order of sentence, qua him are set aside and he is acquitted of the offence for which he was charged. His sentence of imprisonment had been suspended by this Court vide order dated 01.02.2007, so his personal bond and surety bond furnished by him pursuant to, order (supra) are ordered to be discharged.

However, criminal appeal No. D-357-DB of 2006 filed by

Pawan-appellant is dismissed.

(S.S. SARON)
JUDGE

(S.P. BANGARH)
JUDGE

October 30, 2012
sham